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**IMPLEMENTATION GUIDELINES FOR
*CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999***

**SECTION 199
AUTHORITIES FOR REQUIRING ENVIRONMENTAL EMERGENCY PLANS**



**ENVIRONMENTAL EMERGENCIES PROGRAM
ENVIRONMENT CANADA**

FEBRUARY 2001

National Library of Canada cataloguing in publication data

Environmental Emergencies Program (Canada)

Implementation guidelines for Canadian Environmental Protection Act, 1999,
Section 199, Authorities for requiring environmental emergency plans

Issued also in French under title: Lignes directrices pour la mise en
application de la Loi canadienne sur la protection de l'environnement, 1999,
Article 199 : Avis obligeant des plans d'urgence environnementale.

ISBN 0-662-29925-6

Cat. No. En40-619/2001E

1. Environmental law -- Canada.
 2. Pollution -- Law and legislation -- Canada.
 3. Environmental protection -- Canada.
 4. Emergency management -- Canada.
- I. Title.

KE3619.E58 2001

344.71'046

C2001-980038-X





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FEBRUARY 2001

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1.0 PREFACE

Prevention of damage to the environment is key to the goal of the *Canadian Environmental Protection Act, 1999* (CEPA) of achieving “the highest level of environmental quality for all Canadians”, as stated in the Act’s preamble. In addition, the administrative duty imposed in subsection 2(a.1) requires the Government of Canada to “take preventive and remedial measures to protect, enhance and restore the environment”.

Part 8 of the CEPA on environmental emergencies (sections 193 to 205) provides the Minister of the Environment with various powers to reduce gaps in or between federal and provincial¹ legislation for the prevention of, preparedness for, response to or recovery from environmental emergencies. Part 8 also provides other authorities and obligations for the Minister.

Section 199 represents one of the important components of this comprehensive emergencies management framework. It authorizes the Minister to require the preparation and implementation of environmental emergency plans for substances on Schedule 1, the List of Toxic Substances (CEPA toxic substances), for substances the ministers of the Environment and Health have recommended the Governor in Council add to Schedule 1 and for substances for which the Governor in Council, on the recommendation of the Ministers, has made an order adding the substance to Schedule 1. The requirement for environmental emergency plans will be determined using a risk assessment framework approach. The success of environmental emergency planning will be assessed against an environmental objective, which will be stated in the notice in the *Canada Gazette*. These guidelines describe how Environment Canada intends to administer section 199. If information being submitted is considered confidential, refer to Section 313 of the CEPA.

The CEPA contains other sections relating to environmental emergencies. Part 9 (Government Operations and Federal and Aboriginal Land) authorizes the Governor in Council, on the recommendation of the Minister, to make regulations respecting environmental emergencies in relation to government operations and federal and aboriginal land. Part 10 (Enforcement) authorizes the court to order anyone convicted of an offence under the CEPA to prepare and implement an environmental emergency plan. Various provisions in Part 8 authorize the Minister to take other measures related to prevention, preparedness, response or recovery. **These guidelines address only section 199 - Authorities for Requiring Environmental Emergency Plans.**

This document is not meant to be the definitive interpretation of the CEPA or of any regulation made under the Act. Provisions of the CEPA have been reproduced for convenience of reference only and have no official sanction.

¹ For the purposes of this document, the term *provincial legislation* shall refer to provincial, territorial and aboriginal legislation.

2.0 SUMMARY OF CEPA'S ENVIRONMENTAL EMERGENCY PLANNING PROVISIONS UNDER PART 8 – SECTION 199

Environment Canada's objective for environmental emergency planning under section 199 is to ensure that risk management measures adopted for toxic substances include effective prevention, preparedness, response and recovery components. The Minister will use the authority to require environmental emergency plans to complement other existing or forthcoming risk management measures (e.g., regulations, guidelines) for CEPA toxics. In some cases, this may entail supplementing existing regulations or other instruments. When a substance is declared CEPA toxic, it may be necessary to ensure that environmental emergency measures are implemented immediately to prevent, prepare for, respond to and recover from sudden, unplanned or accidental releases of that substance.

As defined in the CEPA, Section 193, an environmental emergency means:

- “(a) an uncontrolled, unplanned or accidental release...of a substance into the environment; or
- “(b) the reasonable likelihood of such a release into the environment.”

This approach for the implementation of section 199 is consistent with:

- the general objective of environmental protection;
- the administrative duty to take preventative and remedial measures; and
- the concept of Part 8 of the CEPA serving as a “safety net” to complement other risk management measures.

Subsection 199(1) of the CEPA authorizes the Minister of the Environment to require the preparation and implementation of environmental emergency plans for:

- substances on the List of Toxic Substances (Schedule 1 of the Act); or
- substances determined by the ministers of the Environment and Health to be toxic under the CEPA and recommended or ordered to be added to the List of Toxic Substances.

The Minister may require a person (e.g., company or individual) or class of persons (e.g., industry sector) to prepare and implement an environmental emergency plan respecting the prevention of, preparedness for, response to or recovery from an environmental emergency. This requirement is triggered by publication of a notice in the *Canada Gazette* under subsection 199(1).

This *Gazette* notice shall specify:

- who will be required to prepare and implement an environmental emergency plan;
- the substance or group of substances for which the plan shall be prepared and implemented;
- the time limits for preparing and implementing the plan; and
- any other matter that the Minister considers necessary.

Unless requested by the Minister as per subsection 199(7), environmental emergency plans prepared under section 199 are not submitted to Environment Canada. Instead, two types of declarations must be sent to the Department. First, a declaration of preparation must be filed within a specified period of time stating that the environmental emergency plan has been prepared and is being implemented.

Second, a declaration of implementation must be filed within a specified period of time stating that the implementation of the environmental emergency plan has been completed. The Department's intention is to have an on-line database for electronic submission of the declarations ready in time for the first required submissions of declarations (i.e., approximately six months following issuance of a Notice in the *Canada Gazette* indicating that an environmental emergency plan is required for a substance). In the event that information in either of these declarations becomes false or misleading, an amended declaration must also be submitted to the Department. A copy of the environmental emergency plan must be held at the place in relation to which it has been prepared.

As part of an ongoing auditing process, the Minister may request a random selection of environmental emergency plans prepared under Section 199 be submitted to the Department for review. Such a random selection of plans would help ensure that departmental guidance on environmental emergency issues is adequate and being properly interpreted.

In order to prevent duplication of efforts, parties may satisfy the requirements of a subsection 199(1) notice by using an environmental emergency plan prepared or implemented on a voluntary basis or for another government or under another Act of Parliament. Where such a plan does not meet all the requirements of the notice, the plan shall be amended or an additional plan be prepared to meet the remainder of those requirements. As for all other environmental emergency plans prepared or implemented under Part 8, declarations of preparation and implementation must be filed.

There are strict penalties for not complying with the provisions of the CEPA. Part 10 (Enforcement), sections 272 to 274, outlines various offences and penalties for contraventions of the Act, regulations or agreements, for providing false or misleading information, and for causing damage to the environment or risk of death or harm to persons. Enforcement Officers may request access to environmental emergency plans prepared under Section 199 in order to confirm that they have been prepared and implemented.

Subsection 343(1) of the CEPA (Permanent Review of Act by Parliamentary Committee) calls for a review of the administration of the Act every five years. This could include a review of these guidelines, with possible subsequent modifications.

Appendix 1 lists the factors the Minister may take into consideration in determining whether an environmental emergency plan would be required. Appendix 2 contains a model subsection 199(1) notice requiring environmental emergency plans. Appendix 3 contains a list of suggested references for environmental emergency measures and the development of environmental emergency plans. Appendix 4 contains the forms for requests for time extensions and Appendix 5 contains the forms for declarations of preparation and implementation for environmental emergency plans. Appendix 6 provides additional information on terms used within these guidelines.

For information relating to environmental emergencies, visit Environment Canada's website at: www.ec.gc.ca.

3.0 APPLICATION OF SECTION 199

3.1 REQUIREMENTS FOR ENVIRONMENTAL EMERGENCY PLANS – CEPA SUBSECTION 199(1)

According to the CEPA subsection 199(1), “*The Minister may at any time publish in the Canada Gazette, and in any other manner that the Minister considers appropriate, a notice requiring any person or class of persons described in the notice to prepare and implement an environmental emergency plan respecting the prevention of, preparedness for, response to or recovery from an environmental emergency in respect of*

(a) a substance or group of substances on the List of Toxic Substances in Schedule 1; or
(b) a substance or group of substances in relation to which there has been published in the Canada Gazette

(i) a statement of the Ministers under paragraph 77(6)(b) indicating that the measure that they propose to take, as confirmed or amended, is a recommendation that the substance be added to the List of Toxic Substances in Schedule 1, or

(ii) a copy of an order proposed to be made under subsection 90(1).”

Rationale

The Minister may require a person or class of persons to prepare an environmental emergency plan for a substance that is on the List of Toxic Substances or has been recommended or ordered to be added to the List. For substances which have been recommended or ordered to be added to the List of Toxic Substances, a notice indicating this must have been published in the *Canada Gazette* before an environmental emergency plan may be required. Note that the requirement for environmental emergency plans can only occur in relation to those aspects of an environmental emergency that:

- a) have or may have an immediate or long-term harmful effect on the environment;
- b) constitute or may constitute a danger to the environment on which human life depends; or
- c) constitute or may constitute a danger to human life or health in Canada.

Guidance

a) Factors that may be taken into consideration when determining which toxic substances should be subject to the requirements of section 199

The Minister may take the following factors into consideration when determining whether to publish a notice requiring the preparation and implementation of environmental emergency plans:

- data on the quantity and use in commerce or storage of the substance in Canada to determine potential for exposure;
- data to determine the toxicity and threshold levels of these substances;
- data which are routinely gathered relating to uncontrolled, unplanned or accidental releases of these substances (i.e., frequency and severity of spills);
- which toxic substances, when released into the environment, present an immediate or long-term harmful effect on the environment, a danger to the environment on which human life depends, or a danger to human life or health; and

- whether the risks posed by these substances are being adequately managed by existing federal or provincial regulations or legislation. This may involve an examination of whether or not these regulations or legislation achieve or take into account the environmental goal of preventing, preparing for, responding to or recovering from a sudden, unplanned or accidental release of the toxic substance. In the event that regulations or legislation have not yet been developed for specific substances, this information may also be incorporated into the assessment process.

The Department may make a recommendation to the Minister that an environmental emergency plan should be required under subsection 199(1) where the sudden, unplanned or accidental release of the toxic substance presents an immediate or long-term harmful effect on the environment, a danger to the environment on which human life depends, or a danger in Canada to human life or health. At any time, the Minister may request that environmental emergency plans be prepared and implemented for substances already placed on Schedule 1 or substances recommended or ordered for addition to the List of Toxic Substances. Information about the CEPA and the substances on Schedule 1 is available from the following website: www.ec.gc.ca/CEPAregistry.

For materials or mixtures which contain substances declared toxic under the CEPA, the requirement to prepare and implement an environmental emergency plan specific to the toxic substance may depend upon several factors (e.g., the concentration of the substance, the volume of the material). Given that the intent of Section 199 is to prevent damage from toxic substances, the requirement to prepare and implement an environmental emergency plan specific to the toxic substance will be made on a case by case basis.

It is important to note that, under the CEPA, it is possible for the ministers of the Environment and Health to propose a guideline, code of practice or memorandum of understanding to manage the risk posed by a toxic substance. However, these do not have the force of law. While encouraging the use of one of these non-regulatory tools to manage toxic substances, the Minister may determine that the environmental goal respecting environmental emergencies is not being met and therefore request that an environmental emergency plan be prepared and implemented.

b) Factors that may be taken into consideration when determining who will have to prepare and implement an environmental emergency plan under section 199

The Minister may take the following factors into consideration when determining who will be required to prepare and implement an environmental emergency plan under section 199:

- the commercial, manufacturing, processing or other users and sources of CEPA toxic substances identified under the process described above that meet the categories specified in Appendix 1; and
- all other commercial, manufacturing, processing or other activities from which the Minister is satisfied that the uncontrolled, unplanned or accidental release of the toxic substance:
 - a) have or may have an immediate or long-term harmful effect on the environment;
 - b) constitute or may constitute a danger to the environment on which human life depends; or
 - c) constitute or may constitute a danger to human life or health in Canada.

For persons or companies with several facilities or areas where toxic substances are located, an environmental emergency plan specific to each location may generally be required. As with all other environmental emergency plans, these plans must address the prevention of, preparedness for, response to or recovery from an uncontrolled, unplanned or accidental release of a toxic substance at that location. For each location, a declaration of preparation and implementation should be submitted, and a site-specific environmental emergency plan must be prepared and kept at that location.

c) Subsection 77(6) statements

For each substance that they propose to add to the List of Toxic Substances as a result of a review or assessment conducted pursuant to subsection 77(1), the ministers of the Environment and Health will publish, under subsection 77(6), a summary of the screening risk assessment, review of a decision of another jurisdiction or of a report of the assessment of substances on the Priority Substances List and a statement indicating how they intend to develop a proposed instrument or regulation respecting preventive or control measures in relation to that substance. Among other things, this statement may indicate whether environmental emergency plans will be required. The assessment of substances on the second Priority Substances List were scheduled for completion by December 31, 2000, and reports of those assessments will state whether or not the substances are toxic within the meaning under the CEPA and recommended for possible addition to Schedule 1. Information on the status of these assessments is available on Environment Canada's Commercial Chemicals Evaluation Branch website.

3.2 CONTENTS OF NOTICE – CEPA SUBSECTION 199(2)

CEPA subsection 199(2) states that “*The notice shall specify*

- (a) the substance or group of substances in relation to which the plan is to be prepared;*
- (b) the period of time within which the plan is to be prepared;*
- (c) the period of time within which the plan is to be implemented; and*
- (d) any other matter that the Minister considers necessary.”*

Rationale

This subsection sets out the type of information that must be included in the *Canada Gazette* notice requiring that an environmental emergency plan be prepared. The notice will describe the substances, the time frame for preparation, the time frame for implementation and any other matter considered necessary.

Guidance

For those persons or classes of persons required to prepare an environmental emergency plan, a notice will be published in the *Canada Gazette* indicating who specifically is required to prepare and implement an environmental emergency plan and with what specifically the plan must deal.

While certain core elements should be incorporated into an environmental emergency plan, the subsection 199(1) notice will attempt to avoid prescriptive language regarding the exact measures to be included in the environmental emergency plan. Rather, the notice will describe the environmental objectives to be achieved. As such, it may include explanatory notes that are separate from its compulsory content and that set out the issues of concern to the Minister of the Environment and, where appropriate, refer to relevant examples, models or guidelines.

Appendix 2 contains a model subsection 199(1) notice.

Content of an Environmental Emergency Plan

The Minister may issue guidelines and codes of practice to guide the preparation of environmental emergency plans. Appendix 3 provides a list of references that may be utilized when preparing an environmental emergency plan covering prevention, preparedness, response and recovery.

It is recognized that the complexity of environmental emergency plans may vary depending upon the circumstances for each individual or company required to prepare and implement a plan. Although the primary goal of preparing and implementing an environmental emergency plan is to prevent emergencies from occurring, such advance planning is critical for preparedness and response activities in the event that an emergency does occur. In general, environmental emergency plans should contain:

- a senior-level statement committing to implement and maintain the environmental emergency plan;
- an identification of what types of emergencies might possibly occur, including both on-site and off-site consequences, and the associated prevention efforts under way as well as the preparedness, response and recovery capabilities;
- a description of the roles and responsibilities of individuals during an environmental emergency;
- accurate contact lists for emergency resource personnel and equipment;
- detailed training logs for emergency response individuals; and
- a means for ensuring that the plan is current, comprehensive and effective (e.g., routine testing and updating of the plan).

Environment Canada strongly recommends that persons preparing an environmental emergency plan include community and interest groups and local and provincial emergency authorities in the development and preparation of the plan, and also share the implemented plan with these persons. Communication of risk to surrounding communities is an essential component of both prevention and preparedness activities. Communication of information on what citizens should do in the event of an emergency is critical and the ability of citizens to do so is an essential component of preparedness. Communication of this nature can help dispel undue fears over risks which may not be present and also raise the comfort level of the community that risks which are present are under proper control.

3.3 EXTENSION OF TIME – CEPA SUBSECTION 199(3)

CEPA subsection 199(3) states that “*Where the Minister is of the opinion that further time is necessary to prepare or implement the plan, the Minister may extend the period for a person who submits a written request before the expiry of the period referred to in the notice or of any extended period.*”

Rationale

It may not be possible for all parties to meet the time frames specified for preparing or implementing an environmental emergency plan. This subsection gives the Minister the authority to extend the time limit set in a notice made under subsection 199(1) when a written request for an extension has been submitted before the end of this limit or another extension, and the Minister believes that extra time is necessary.

Guidance

In general, the Minister will provide a period of approximately six months after publication of the subsection 199(1) notice for the preparation of environmental emergency plans and a further six months for completion of the implementation of the plans. In order for the Minister to decide whether an extension should be granted, a request must be submitted to the Minister prior to the end of the time limit set in the notice or in another extension, and the Minister must be of the opinion that further time is necessary.

An environmental emergency plan should take into consideration prevention, preparedness, response and recovery and can be considered implemented when it has been written and is operational to the point where the person submitting the declaration can expect to successfully deal with all aspects of an environmental emergency. Implementation includes prevention, preparedness, response and recovery documentation, access to the identified response resources, training, and testing sufficient to validate the plan. Under Part 8, recovery from an environmental emergency means restoring any part of the environment damaged by or during an emergency (see Explanatory Notes - Appendix 6).

Appendix 4 contains forms for applying for time extensions. Since it is possible that a request for an extension may not be granted, applications for time extensions should be made as early as reasonably feasible.

3.4 PLAN PREPARED OR IMPLEMENTED FOR ANOTHER PURPOSE – CEPA SUBSECTION 199(4)

According to the CEPA subsection 199(4):

“Subject to subsection (5), where a person who is required to prepare or implement an environmental emergency plan under a notice published under this section has prepared or implemented a plan in respect of environmental emergencies on a voluntary basis or for another government or under another Act of Parliament that meets all or some of the requirements of the notice, the person may use that plan for the purposes of meeting the requirements of this Part and, in that case, the plan shall be considered to be an environmental emergency plan that has been prepared or implemented under this Part.”

Rationale

The intent of this subsection is to avoid duplicating efforts. Work completed to prepare and implement environmental emergency plans to meet requirements of federal or provincial legislation or on a voluntary basis may be used to meet the requirements in the CEPA and allows for a “one plan” approach.

Guidance

Environmental emergency plans prepared on a voluntary basis or pursuant to the requirements of other federal or provincial legislation may be deemed to meet some or all of the requirements of the subsection 199(1) notice.

Where the existing plan does not meet all of the requirements of the subsection 199(1) notice, the person shall either amend the previously completed plan or prepare an additional plan that meets the remainder of the requirements. In any event, all persons using a pre-existing plan to satisfy a

subsection 199(1) notice shall file both a declaration of preparation and a declaration of implementation.

Environment Canada is committed to ongoing consultation with federal departments, including the Department of Fisheries and Oceans, Transport Canada, and Health Canada with a view to avoiding duplication with emergency planning requirements under other legislation, such as the *Canada Shipping Act* or *Transportation of Dangerous Goods Act*.

3.5 WHERE PARTIAL REQUIREMENTS ARE MET – CEPA SUBSECTION 199(5)

CEPA subsection 199(5) specifies that “*Where a person uses a plan under subsection (4) that does not meet all of the requirements of the notice, the person shall*

(a) amend the plan so that it meets all of those requirements; or

(b) prepare an additional environmental emergency plan that meets the remainder of those requirements.”

Rationale

A person must meet all of the requirements set out in a notice to prepare and implement an environmental emergency plan. If a plan prepared on a voluntary basis or for another government or department is incomplete, it must be amended or a new plan prepared that meets the remainder of the requirements.

Guidance

This subsection clarifies the process for using a plan prepared for another purpose. The plan may have to be amended or a new environmental emergency plan prepared which meets the remainder of the requirements of the notice. The requirements set out in the subsection 199(1) notice to prepare and implement an environmental emergency plan must be met, either through an existing, amended or new environmental emergency plan.

3.6 APPLICATION OF PROVISIONS RE: DECLARATIONS AND KEEPING PLANS – CEPA SUBSECTION 199(6)

According to the CEPA subsection 199(6), “*Sections 58 and 59 apply to environmental emergency plans, with any modifications that the circumstances require, as if any reference to a pollution prevention plan were read as a reference to an environmental emergency plan.”*

CEPA sections 58 and 59 contain the following provisions:

CEPA subsection 58(1) states that “*Every person who is required to prepare a pollution prevention plan under section 56 or 291 or under an agreement in respect of environmental protection alternative measures shall file, within 30 days after the end of the period for the preparation of the plan specified in the notice referred to in subsection 56(1) or extended under subsection 56(3), or specified by the court under section 291 or in the agreement, as the case may be, a written declaration to the Minister that the implementation of the plan has been completed.”*

CEPA subsection 58(2) states that “Every person who is required to implement a pollution prevention plan under section 56 or 291 or under an agreement in respect of environmental protection alternative measures shall file, within 30 days after the completion of the implementation of the plan, a written declaration to the Minister that the implementation of the plan has been completed.”

CEPA subsection 58(3) states that “Where a person has filed a declaration under subsection (1) or (2) and the declaration contains information that, at any time after the filing, has become false or misleading, that person shall file an amended declaration to the Minister within 30 days after that time.”

CEPA subsection 58(4) states that “A declaration referred to in subsection (1), (2) or (3) shall be filed in the form and manner and contain the information specified by the Minister.”

CEPA section 59 states that “Every person who is required to prepare a pollution prevention plan under section 56 or 291 or under an agreement in respect of environmental protection alternative measures shall keep a copy of the plan at the place in Canada in relation to which the plan is prepared.”

Rationale

As with the declarations required for pollution prevention plans, the same provisions apply to environmental emergency plans. A person does not have to submit the plan to the Minister, but has 30 days after the end of the time period specified in the notice for the preparation of the plan and 30 days after completion of implementation of the plan to declare that fact in writing to the Minister. The person must keep a copy of the plan at the place for which it was prepared and where it was implemented. The person must also amend the declaration if any information in the declaration becomes false or misleading.

Guidance

Parties required to prepare and implement an environmental emergency plan must submit two declarations to the Minister:

- the first within 30 days after the end of the period provided to prepare the plan indicating that the plan has been prepared and is being implemented; and
- the second within 30 days after completion of the implementation of the plan and no later than 30 days after the implementation date specified in the notice, indicating that the implementation of the plan has been completed.

In addition, if at any time any of the information contained in either of these declarations becomes false or misleading, an amended declaration must be filed within 30 days after that time.

The first declaration (preparation of plans) shall provide information on :

- a) facility data;
- b) an indication of whether or not environmental emergency prevention, preparedness, response and recovery measures are identified in the plan;
- c) an indication of whether or not information from previous environmental emergencies are incorporated into the plan; and
- d) an indication of whether or not employee training, plan testing and plan review are incorporated into the plan.

The second declaration (implementation of plans) shall confirm that the implementation of the environmental emergency plan described in the declaration of preparation has been completed.

As previously indicated, a plan will be considered implemented when it has been written and is operational to the point where the person submitting the declaration can expect to successfully deal with all aspects of an environmental emergency.

As discussed in Section 3.1, for persons or companies with several facilities or areas where toxic substances are located and who are required to prepare and implement an environmental emergency plan, a plan specific to each location may generally be required. There may be instances, however, where the prevention of, preparedness for, response to or recovery from a sudden, unplanned or accidental release of a toxic substance at that location is either covered under a larger plan (e.g., an area-wide environmental emergency plan) or under a company-wide plan for all its facilities.

For each location for which an environmental emergency plan is required, a declaration of preparation and a declaration of implementation must be submitted. If the declaration being submitted covers multiple areas or facilities or sites or substance(s) of concern, detailed information for each location, as per Appendix 5, must be provided. A copy of the environmental emergency plan must be held at each location.

Appendix 5 contains forms for declarations of preparation and implementation.

3.7 SUBMISSION OF PLANS – CEPA SUBSECTION 199(7)

Under the terms of the CEPA subsection 199(7), *“The Minister may publish in the Canada Gazette, and in any other manner that the Minister considers appropriate, a notice requiring any person or class of persons described in the notice who are required to prepare or implement an environmental emergency plan under subsection (1) or section 291 or under an agreement in respect of environmental protection alternative measures to submit, within the period specified by the Minister, the plan or any part of the plan.”*

Rationale

The Minister may require a person to submit all or part of an environmental emergency plan. The Minister may request to see an environmental emergency plan where an inspection indicates that follow-up action is required, where a plan has been prepared pursuant to a court order or an environmental protection alternative measures agreement, or where the substances involved present a serious environmental concern.

Guidance

The Minister may require the submission of all or part of the plan when it has been determined that there is a need to develop further risk management measures in relation to specific substances in the plan. It may also be necessary to submit an environmental emergency plan required pursuant to a court order issued under subsection 291(1) or under an environmental protection alternative measures agreement negotiated between the Attorney General of Canada and an alleged offender.

APPENDICES

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APPENDIX 1

FACTORS THE MINISTER MAY TAKE INTO CONSIDERATION WHEN DETERMINING WHETHER AN ENVIRONMENTAL EMERGENCY PLAN WOULD BE REQUIRED

FACTORS THE MINISTER MAY TAKE INTO CONSIDERATION WHEN DETERMINING WHETHER AN ENVIRONMENTAL EMERGENCY PLAN WOULD BE REQUIRED

Background

Subsection 199(1) of the *Canadian Environmental Protection Act, 1999* (CEPA), authorizes the Minister of the Environment to require any person or class of persons to prepare and implement an environmental emergency plan respecting the prevention of, preparedness for, response to or recovery from an environmental emergency for substances on the List of Toxic Substances in Schedule 1 and substances the ministers of the Environment and Health have recommended or ordered to be added to Schedule 1.

The factors the Minister may take into consideration to determine whether an environmental emergency plan would be required under section 199 are set out below.

1.0 Substances on the List of Toxic Substances in Schedule 1

For substances on the List of Toxic Substances in Schedule 1, the Minister may take the following factors into consideration when determining whether an environmental emergency plan would be required:

- a) whether the substance is currently imported, manufactured, used or stored in Canada;
- b) whether the management option for the substance includes the requirement for an emergency plan outlining preventative, control or remedial measures (or equivalent) that adequately address the prevention of, preparedness for, response to or recovery from an environmental emergency; and
- c) for all other substances on the List of Toxic Substances where the Minister determines that, after a review of available data by the process indicated in Section 3.0 of these guidelines, whether there is potential for a sudden, unplanned or accidental release to occur, given the existing or proposed preventative or control measures.

2.0 Substances recommended or ordered for addition to Schedule 1

For substances the ministers of the Environment and Health have recommended under subsection 77(6)(b) that the Governor in Council add to Schedule 1 or have recommended under subsection 90(1) that the Governor in Council make an order adding the substance to Schedule 1, the Minister of the Environment may require an environmental emergency plan. This plan may be required as a temporary instrument for the interim period until risk management measures are implemented that address environmental emergencies satisfactorily; however, nothing precludes the environmental emergency plan from being used as a permanent risk management tool for a substance.

APPENDIX 2

MODEL SUBSECTION 199(1) *GAZETTE* NOTICE

MODEL SUBSECTION 199(1) GAZETTE NOTICE

Canadian Environmental Protection Act, 1999

Notice with Respect to Environmental Emergency Plans

Notice is hereby given that, pursuant to the provisions of subsection 199(1) of the *Canadian Environmental Protection Act, 1999*, the persons or classes of persons described in paragraph 1 of this notice shall prepare and implement an environmental emergency plan respecting the prevention of, preparedness for, response to or recovery from an environmental emergency in respect of [***name of substance or substances***], which [is/are on the List of Toxic Substances in Schedule 1] [the Ministers of the Environment and Health has/have recommended or ordered that the Governor in Council add to Schedule 1] of the *Canadian Environmental Protection Act, 1999* for the purpose of [***state environmental objective***].

1. *Persons required to prepare environmental emergency plans:* [***typically will specify persons required to prepare plans by referring to factors such as industry sector, use, quantity and storage volumes, rather than by naming individual companies***]. For persons or companies which have several facilities or areas where [***name of substance or substances***] are located, an environmental emergency plan specific to each location is required. In the event that a company-wide or area-wide environmental emergency plan covers several of these facilities in relation to [***name of substance or substances***], this plan can be used as a “site-specific” plan for the purposes of this notice.
2. *Period within which the plan is to be prepared:* The plan shall be prepared within [***time period to be specified; it will usually be six months***] of the date of this notice.
3. *Period within which implementation of the plan is to be completed:* Implementation of the plan shall be completed within [***time period to be specified; it will usually be twelve months***] of the date of this notice.
4. *Content of plans:* Although persons preparing plans may determine the appropriate content of their own environmental emergency plans, every person subject to this notice shall take into consideration the elements outlined in the Implementation Guidelines for section 199. These include, but are not limited to, the following:
 - a senior-level statement committing to implement and maintain the environmental emergency plan;
 - an identification of what types of emergencies might possibly occur, including both on-site and off-site consequences, and the associated prevention efforts underway as well as the preparedness, response and recovery capabilities;
 - a description of the roles and responsibilities of individuals during an environmental emergency;
 - accurate contact lists for emergency resource personnel and equipment;
 - detailed training logs for emergency response individuals; and
 - a means for ensuring that the plan is current, comprehensive and effective (e.g., routine testing and updating of the plan).

These plans must address the prevention of, preparedness for, response to or recovery from an uncontrolled, unplanned or accidental release of [***name of substance or substances***].

5. *Declaration of preparation:* Pursuant to subsection 199(6) of the CEPA, every person identified in paragraph 1 of this notice shall file, within 30 days after the end of the period for the preparation of the plan specified in paragraph 2 of this notice, a “Declaration that an Environmental Emergency Plan Has Been Prepared and is Being Implemented.” This declaration shall provide information on:

- a) facility data;
- b) an indication of whether or not environmental emergency prevention, preparedness, response and recovery measures are identified in the plan;
- c) an indication of whether or not information from previous environmental emergencies that have occurred related to [*name of substance or substances*] are incorporated into the plan; and
- d) an indication of whether or not employee training, plan testing and plan review are incorporated into the plan.

Forms for this declaration are available from [*URL to be determined*]. Each location requiring an environmental emergency plan must be covered under such a declaration.

6. *Declaration of implementation:* Pursuant to subsection 199(6), every person identified in paragraph 1 of this notice shall file, within 30 days after the completion of the implementation of the plan, and no later than 30 days after the implementation date specified in paragraph 3 of this notice, a “Declaration that the Implementation of an Environmental Emergency Plan Has Been Completed.” This declaration shall confirm that the implementation of the environmental emergency plan described in the declaration of preparation has been completed. Forms for this declaration are available from [*URL to be determined*]. Each location requiring an environmental emergency plan must be covered under such a declaration.

7. *Filing of amended declaration:* Pursuant to subsection 199(6), where the declaration contains information that, at any time after the filing, has become false or misleading, the person identified in paragraph 1 of this notice shall file an amended declaration to the Minister within 30 days after that time.

8. *Requirement to keep plan:* Every person identified in paragraph 1 of this notice shall keep a copy of the environmental emergency plan at the place in Canada for which the plan was prepared.

9. *Pre-existing plans:* If you have prepared or implemented a plan in respect of environmental emergencies on a voluntary basis, for another government, or under another Act of Parliament, you may use that plan for the purposes of this notice if it meets the requirements specified in paragraph 4. If the plan does not meet all the requirements specified in paragraph 4, subsection 199(5) of the CEPA provides that either the plan must be amended or an additional plan that meets the remainder of the requirements must be prepared. In any event, all persons using a pre-existing environmental emergency plan to satisfy the requirements in paragraph 4 shall file both a declaration of preparation and a declaration of implementation.

10. *Extension of preparation date:* Where the Minister has received a written request for an extension of time to prepare an environmental emergency plan, the Minister may extend the period for preparing the plan. For an extension to be granted, the request must be submitted prior to the expiry of the period referred to in paragraph 2 of this notice and the Minister must be of the opinion that further time is necessary to prepare the plan. The form to be submitted to the Minister when requesting this extension is the “Request for Extension of Time to Prepare an Environmental Emergency Plan,” and is available from [*URL to be determined*].

11. *Extension of implementation date:* Where the Minister has received a written request for an extension of time to implement an environmental emergency plan, the Minister may extend the period for implementing the plan. For an extension to be granted, the request must be submitted prior to the expiry of the period referred to in paragraph 3 of this notice and the Minister must be of the opinion that further time is necessary to implement the plan. The form to be submitted to the Minister when requesting this extension is the “Request for Extension of Time to Implement an Environmental Emergency Plan,” and is available from [*URL to be determined*].
12. *Other matters:* [*include any other necessary information or requirements*].
13. *More information on environmental emergency planning:* Additional information and guidance on preparing environmental emergency plans may be obtained from [*possible sources of information*].
14. *Reference number:* For administrative purposes, all communication with Environment Canada concerning this notice should refer to the following reference number:

Minister of the Environment

APPENDIX 3

SUGGESTED REFERENCES FOR ENVIRONMENTAL EMERGENCIES PREVENTION, PREPAREDNESS AND RESPONSE MEASURES AND DEVELOPMENT OF ENVIRONMENTAL EMERGENCY PLANS

Suggested References for Environmental Emergencies Prevention, Preparedness and Response Measures and Development of Environmental Emergency Plans

American Petroleum Institute. *Recommended Practice 750, Management of Process Hazards*. Washington: American Petroleum Institute, 1995. This document is available from the American Petroleum Institute in Washington, D.C.; Phone (202) 682-8000 or visit its website at www.api.org; (\$42 US).*

Canadian Standards Association. *Emergency Planning for Industry: A National Standard for Canada (CAN/CSA-Z731-95)*. Toronto: Canadian Standards Association, 1995. This document can be ordered from CSA International at 1-800-463-6727 or from their website at www.test-and-certify.com. ID# 2004922; (\$65).*

Conseil régional des accidents industriels majeurs (CRAIM). *Guide de gestion des risques d'accidents industriels majeurs à l'intention des municipalités et de l'industrie*. Montréal, 2000. This document is currently available only in French.

Major Industrial Accidents Council of Canada (MIACC). *Community Self-Assessment Tool*. Ottawa: Major Industrial Accidents Council of Canada, 1999.

_____. *Hazardous Substances Risk Assessment: A Mini-Guide for Municipalities and Industry*. Ottawa: Major Industrial Accidents Council of Canada, 1994. This document can be obtained from the Canadian Association of Fire Chiefs in Ottawa; Phone (613) 728-2123; (\$75)*

_____. *Process Safety Management*, 2nd Edition. Ottawa: Major Industrial Accidents Council of Canada, 1996. ISBN Number: 1-89858-04-6. This document is available for downloading from the Canadian Chemical Producers Association website (www.ccpa.ca) or from the Canadian Society for Chemical Engineering; Phone (613) 232-6252.

_____. *Site Self-Assessment Tool*. Ottawa: Major Industrial Accidents Council of Canada, 1999.

United Nations Environment Programme. *APELL, Awareness and Preparedness for Emergencies at Local Level: A Process for Responding to Technological Accidents*. Paris: United Nations Environment Programme, 1988. This document can be ordered from the United Nations Environment Programme's on-line bookshop at www.EarthPrint.com. ISBN: 9280711830; Stock Number: AP1; (\$15 US).*

* estimated cost - this may change without notice

APPENDIX 4

FORMS FOR REQUESTS FOR EXTENSIONS

**FORMS FOR REQUESTS FOR EXTENSION OF TIME TO PREPARE
OR IMPLEMENT AN ENVIRONMENTAL EMERGENCY PLAN PURSUANT
TO A NOTICE UNDER SECTION 199 OF THE CEPA**

Background

Paragraphs 199(2)(b) and (c) of the *Canadian Environmental Protection Act, 1999*, require the Minister of the Environment to specify the period within which an environmental emergency plan is to be prepared and implemented, respectively. Subsection 199(3) authorizes the Minister of the Environment to extend these periods if the person subject to a notice submits a written request for an extension before the expiry of the period referred to in the notice or of any extended period and if the Minister is of the opinion that further time is necessary.

The attached documents are the forms for applying for extensions under subsection 199(3).

**Request for Extension of Time to Prepare an Environmental Emergency Plan
(Pursuant to a Notice Under Section 199 of the CEPA)**

1.0 Facility information

- Name of facility: _____
- Address: _____
- Contact person: _____
- Phone number: _____
- Fax number: _____
- E-mail: _____

2.0 Publication date of subsection 199(1) notice and substance(s) of concern identified in the notice

- Publication date of subsection 199(1) notice: _____
- Reference number of the subsection 199(1) notice: _____
- Substance(s) of concern identified in the notice: _____

3.0 Extension requested for preparation of the plan (indicate desired date)

4.0 Rationale for application

Explain why additional time is necessary to prepare the plan.

This application was completed by _____
(Senior Company Manager's name, position)
on _____ (date).

Signature

**Request for Extension of Time to Implement an Environmental Emergency Plan
(Pursuant to a Notice Under Section 199 of the CEPA)**

1.0 Facility information

- Name of facility: _____
- Address: _____
- Contact person: _____
- Phone number: _____
- Fax number: _____
- E-mail: _____

2.0 Publication date of subsection 199(1) notice and substance(s) of concern identified in the notice

- Publication date of subsection 199(1) notice: _____
- Reference number of the subsection 199(1) notice: _____
- Substance(s) of concern identified in the notice: _____

**3.0 Extension requested for completion of implementation of the plan
(indicate desired date)**

4.0 Rationale for Application

Explain why additional time is necessary to complete implementation of the plan.

This application was completed by _____

(Senior Company Manager's name, position)

on _____ (date).

Signature

APPENDIX 5

FORMS FOR DECLARATIONS OF PREPARATION AND IMPLEMENTATION FOR ENVIRONMENTAL EMERGENCY PLANS

FORMS FOR DECLARATIONS OF PREPARATION AND IMPLEMENTATION FOR ENVIRONMENTAL EMERGENCY PLANS

Background

Parties required to prepare an environmental emergency plan pursuant to a notice issued under subsection 199(1) of the *Canadian Environmental Protection Act, 1999*, are required to submit two declarations under subsection 199(6) to the Minister of the Environment:

- the first within 30 days after the end of the period provided to prepare the plan, indicating that the plan has been prepared and is being implemented (Declaration of Preparation); and
- the second within 30 days after the completion of the implementation of the plan, indicating that the implementation of the plan has been completed (Declaration of Implementation).

In addition, if at any time after filing, information contained in either of these declarations becomes false or misleading, an amended declaration must be filed within 30 days of that time.

Subsection 199(4) states that plans prepared or implemented in respect of environmental emergencies on a voluntary basis or for another government or under another Act of Parliament may be used to meet some or all of the requirements of a subsection 199(1) notice. Subsection 199(5) states that where the other plan does not meet all of the requirements of the subsection 199(1) notice, the person shall either amend the plan or prepare an additional plan that meets the remainder of the requirements. Persons wishing to use a pre-existing plan are required to submit subsection 199(6) declarations, and to indicate on those declarations that they are using a pre-existing plan to satisfy the subsection 199(1) notice.

For persons or companies with several facilities or areas where toxic substances are located who are required to prepare and implement an environmental emergency plan, a plan specific to each location may generally be required. There may be instances, however, where the prevention of, preparedness for, response to or recovery from a sudden, unplanned or accidental release of a toxic substance at that location is either covered under a larger plan (e.g., an area-wide environmental emergency plan) or under a company-wide plan for all its facilities.

For each location for which an environmental emergency plan is required, a declaration of preparation and a declaration of implementation must be submitted. If the declaration being submitted covers multiple areas or facilities or sites or substance(s) of concern, detailed information for each location must be provided. A copy of the environmental emergency plan must be held at each location.

The attached documents are forms for the subsection 199(6) declarations.

Section 199
Declaration that an Environmental Emergency Plan
Has Been Prepared and is Being Implemented

1.0 Administrative information

Head office information:

Name of organization _____
Street address or PO box _____
City and province _____
Postal code _____
Contact person _____
(for plan preparation, if applicable)
Title of contact person _____
Telephone # _____
Fax # _____
E-mail _____
NPRI # (if applicable)* _____

Facility/site information:

Name of organization _____
Street address or PO box _____
City and province _____
Postal code _____
Contact person _____
(for plan preparation)
Title of contact person _____
Telephone # _____
Fax # _____
E-mail _____
NPRI # (if applicable)* _____

* NPRI = National Pollutant Release Inventory

If the declaration being submitted covers multiple areas or facilities or sites or substance(s) of concern, please provide detailed information for each location.

2.0 Publication date of the subsection 199(1) notice and substance(s) of concern identified in the notice

Publication date of notice _____
Notice reference number _____
Substance(s) of concern _____

3.0 Is this an Amended Declaration?

Yes / No

If yes, reference number of original declaration:

Please complete only the sections of the declaration which have become false or misleading.

4.0 Use of prior plans

Are you using an environmental emergency plan prepared on a voluntary basis or pursuant to some other legal requirement to satisfy the requirement in the subsection 199(1) notice?

Yes / No

If yes, indicate under what voluntary basis or legal requirement the pre-existing plan was prepared.

5.0 Local-level involvement

5.1 Have local authorities been involved in plan development?

Yes / No

5.2 Have community or interest groups been involved in plan development?

Yes / No

5.3 Are the contents of the plan available to local authorities?

Yes / No

5.4 Are the contents of the plan available to community or interest groups?

Yes / No

6.0 Environmental emergency plan information

For each substance or group of substances for which an environmental emergency plan has been required, state the name of the substance and complete the following subsections.

6.1 Nature of activities

Substance _____

Is the substance of concern (check (√)):

- a) manufactured ()
- b) processed ()
- c) stored ()
- d) otherwise used ()
- e) released from a process upset or uncontrolled/accidental fire ()
- f) other ()
- g) please explain: _____

6.2 Potential on-site environmental emergencies

Does the plan describe potential on-site environmental emergencies related to the substance of concern?

Yes / No

6.3 Potential for off-site consequences or for entry into the environment

Does the plan describe the potential for the substance of concern to enter into the environment including potential impacts on human health and safety?

Yes / No

6.4 Environmental emergency measures

6.4.1 Does the plan identify environmental emergency prevention measures that are in place?

Yes / No

6.4.2 Does the plan identify environmental emergency preparedness measures that are in place?

Yes / No

6.4.3.1 Does the plan identify environmental emergency response measures that are in place?

Yes / No

6.4.3.2 Does the plan identify a process for communicating this information to members of the public who may be adversely affected?

Yes / No

6.4.4 Does the plan identify environmental emergency recovery measures that are in place?

Yes / No

6.5 Previous environmental emergencies

Does the plan incorporate information from environmental emergencies that have occurred at the site related to the substance of concern over the last five years?

Yes / No

6.6 Employee training

Does the plan incorporate requirements for training?

Yes / No

6.7 Plan testing and review

Does the plan incorporate requirements for annual plan review and periodic testing?

Yes / No

This declaration was completed by

(Employee's name, position)

on _____ (date).

Signature

This declaration was authorized by

(Senior Company Manager's name, position)

on _____ (date).

Signature

Section 199
Declaration that the Implementation of an
Environmental Emergency Plan Has Been Completed

1.0 Administrative Information

Head office information:

Name of organization _____
Street address or PO box _____
City and province _____
Postal code _____
Contact person _____
(for plan preparation, if applicable)
Title of contact person _____
Telephone # _____
Fax # _____
E-mail _____
NPRI # (if applicable)* _____

Facility/site information:

Name of organization _____
Street address or PO box _____
City and province _____
Postal code _____
Contact person _____
(for plan preparation)
Title of contact person _____
Telephone # _____
Fax # _____
E-mail _____
NPRI # (if applicable)* _____

* NPRI = National Pollutant Release Inventory

If the declaration being submitted covers multiple areas or facilities or sites or substance(s) of concern, please provide detailed information for each location.

2.0 Publication date of the subsection 199(1) notice and substance(s) of concern identified in the notice

Publication date of notice _____
Notice reference number _____
Substance(s) of concern _____

3.0 Is this an Amended Declaration?

Yes / No

If yes, reference number of original declaration:

Please complete only the sections of the declaration which have become false or misleading.

4.0 Use of prior plans

Are you using an environmental emergency plan prepared on a voluntary basis or pursuant to some other legal requirement to satisfy the requirement in the subsection 199(1) notice?

Yes / No

5.0 Implementation of the environmental emergency plan

Date of testing of the environmental emergency plan _____

Internal departments involved in the testing of the plan

External organizations involved in the testing of the plan

Substance(s) of concern used as part of the environmental emergency plan test

This declaration was completed by

(employee's name, position)

on _____ (date).

Signature

This declaration was authorized by

(Senior Company Manager's name, position)

on _____ (date).

Signature

APPENDIX 6
EXPLANATORY NOTES

Explanatory Notes

The following is provided as additional information to assist those persons preparing and implementing an environmental emergency plan in using these guidelines and understanding the intent of the CEPA Part 8, Section 199.

Prevention

Prevention of environmental emergencies includes several components, the most important of which is the knowledge gained from evaluating risk associated with everyday activities involving the substance(s) of concern. Through the implementation of a risk management program, the efforts a person or company undertakes to prevent environmental emergencies from occurring in the first place is key to reducing the frequency and severity of such emergencies. It also is more cost-effective than having to restore any resulting damage to the environment. The most effective risk management actions include combining such prevention activities, with appropriate levels of preparedness and effective response. For the purposes of these guidelines, prevention refers not only to mitigation measures such as booms and dykes, but also to the management systems for design and operation which ensure that substances and/or materials are actually utilized as intended.

Preparedness

Effective preparedness for environmental emergencies is built on trust and co-operation between people at all levels in communities, industry and government. Through working together, they must accomplish four things:

- a) identify potential risks;
- b) develop environmental emergency plans to deal with the risks;
- c) train personnel to apply the environmental emergency plans; and
- d) review and practice these strategies time and time again.

To enhance the level of preparedness, all key people, including those who may be affected, should be involved with the development and implementation of the environmental emergency plan. By completing effective prevention measures (such as risk management programs which identify all possible emergency situations), persons preparing and implementing an environmental emergency plan can determine the necessary level of preparedness for their situation.

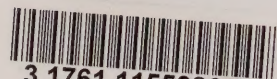
Response

Response to an environmental emergency covers many facets and can vary greatly in scope, depending on the nature and magnitude of the emergency. Quick and effective response relies on sound planning and partnerships. Effective emergency response requires teamwork between industry, communities, local organizations and government through partnerships best formed during non-emergency periods. Effective emergency response includes, but is not limited to, quick activation of the plan, proper notification of the emergency, adequate resource mobilization, assessment of the emergency, and reporting activities. For the purpose of Part 8, response is intended to include all aspects of dealing with and managing an emergency, until the emergency portion of the event can be considered completed.

Recovery

For the purposes of Part 8 of the CEPA, recovery is intended to mean “restoring damage to the environment”. The issue of recovery is best managed through discussions between all involved parties. While the ideal situation may be the recovery of an area to its natural state, this may not

always be possible (e.g., large spill of toxic material). For minor events, complete restoration of the affected area may be possible. Thus, restoration plans would need to be defined in terms of being acceptable to affected stakeholders and could be specific to each situation.



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